



General Assembly

Substitute Bill No. 5433

February Session, 2010

* ____HB05433INS__031110__ *

AN ACT ADJUSTING INSURANCE GUARANTY FUND CREDITS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 38a-841 of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective July 1, 2010, and*
3 *applicable to assessments paid in income years commencing on or after*
4 *January 1, 2010*):

5 [(1)] (a) Said association shall: [(a)] (1) Be obligated to the extent of
6 the covered claims existing prior to the determination of insolvency
7 and arising within thirty days after the determination of insolvency, or
8 before the policy expiration date if less than thirty days after the
9 determination, or before the insured replaces the policy or causes its
10 cancellation, if he does so within thirty days of such determination,
11 provided such obligation shall be limited as follows: [(i)] (A) With
12 respect to covered claims for unearned premiums, to one-half of the
13 unearned premium on any policy, subject to a maximum of two
14 thousand dollars per policy; [(ii)] (B) with respect to covered claims
15 other than for unearned premiums, such obligation shall include only
16 that amount of each such claim which is in excess of one hundred
17 dollars and is less than three hundred thousand dollars for claims
18 arising under policies of insurers determined to be insolvent prior to
19 October 1, 2007, and four hundred thousand dollars for claims arising
20 under policies of insurers determined to be insolvent on or after

21 October 1, 2007, except that said association shall pay the full amount
22 of any such claim arising out of a workers' compensation policy,
23 provided in no event shall [(A) said association be obligated] said
24 association be obligated (i) to any claimant in an amount in excess of
25 the obligation of the insolvent insurer under the policy form or
26 coverage from which the claim arises, or [(B) said association be
27 obligated] (ii) for any claim filed with the association after the
28 expiration of two years from the date of the declaration of insolvency
29 unless such claim arose out of a workers' compensation policy and was
30 timely filed in accordance with section 31-294c; [(b)] (2) be deemed the
31 insurer to the extent of its obligations on the covered claims and to
32 such extent shall have all rights, duties, and obligations of the
33 insolvent insurer as if the insurer had not become insolvent; [(c)] (3)
34 allocate claims paid and expenses incurred among the three accounts,
35 created by section 38a-839, separately, and assess member insurers
36 separately [(i)] (A) in respect of each such account for such amounts as
37 shall be necessary to pay the obligations of said association under
38 subdivision [(a)] (1) of subsection [(1)] (a) of this section subsequent to
39 an insolvency; [(ii)] (B) the expenses of handling covered claims
40 subsequent to an insolvency; [(iii)] (C) the cost of examinations under
41 section 38a-846; and [(iv)] (D) such other expenses as are authorized by
42 sections 38a-836 to 38a-853, inclusive. The assessments of each member
43 insurer shall be in the proportion that the net direct written premiums
44 of such member insurer for the calendar year preceding the assessment
45 on the kinds of insurance in such account bears to the net direct
46 written premiums of all member insurers for the calendar year
47 preceding the assessment on the kinds of insurance in such account.
48 Each member insurer shall be notified of its assessment not later than
49 thirty days before it is due. No member insurer may be assessed in any
50 year on any account an amount greater than two per cent of that
51 member insurer's net direct written premiums for the calendar year
52 preceding the assessment on the kinds of insurance in said account,
53 provided if, at the time an assessment is levied on the "all other
54 insurance" account, as defined in subdivision [(c)] (3) of section 38a-
55 839, the board of directors finds that at least fifty per cent of the total

56 net direct written premiums of a member insurer and all its affiliates,
57 for the year on which such assessment is based, were from policies
58 issued or delivered in Connecticut, on risks located in this state, such
59 member insurer shall be assessed only on such member insurer's net
60 direct written premium that is attributable to the kind of insurance that
61 gives rise to each covered claim. If the maximum assessment, together
62 with the other assets of said association in any account, does not
63 provide in any one year in any account an amount sufficient to make
64 all necessary payments from that account, the funds available may be
65 prorated and the unpaid portion shall be paid as soon thereafter as
66 funds become available. Said association may defer, in whole or in
67 part, the assessment of any member insurer, if the assessment would
68 cause the member insurer's financial statement to reflect amounts of
69 capital or surplus less than the minimum amounts required for a
70 certificate of authority by any jurisdiction in which the member insurer
71 is authorized to transact insurance provided that during the period of
72 deferment, no dividends shall be paid to shareholders or
73 policyholders. Deferred assessments shall be paid when such payment
74 will not reduce capital or surplus below the minimum amounts
75 required for a certificate of authority. Such payments shall be refunded
76 to those insurers receiving greater assessments because of such
77 deferment or, at the election of the insurer, be credited against future
78 assessments. Each member insurer serving as a servicing facility may
79 set off against any assessment, authorized payments made on covered
80 claims and expenses incurred in the payment of such claims by such
81 member insurer if they are chargeable to the account in respect of
82 which the assessment is made; [(d)] (4) investigate claims brought
83 against said association and adjust, compromise, settle, and pay
84 covered claims to the extent of said association's obligations, and deny
85 all other claims. The association shall pay claims in any order it deems
86 reasonable, including but not limited to, payment in the order of
87 receipt or by classification. It may review settlements, releases and
88 judgments to which the insolvent insurer or its insureds were parties
89 to determine the extent to which such settlements, releases and
90 judgments may be properly contested; [(e)] (5) notify such persons as

91 the commissioner may direct under subdivision [(a)] (1) of subsection
92 [(2)] (b) of section 38a-843; [(f)] (6) handle claims through its employees
93 or through one or more insurers or other persons designated by said
94 association as servicing facilities, provided such designation of a
95 servicing facility shall be subject to the approval of the commissioner,
96 and may be declined by a member insurer; [(g)] (7) reimburse each
97 such servicing facility for obligations of said association paid by such
98 facility and for expenses incurred by such facility while handling
99 claims on behalf of said association and shall pay such other expenses
100 of said association as are authorized by sections 38a-836 to 38a-853,
101 inclusive.

102 [(2)] (b) Said association may: [(a)] (1) Employ or retain such persons
103 as are necessary to handle claims and perform other duties of said
104 association; [(b)] (2) borrow such funds as may be necessary from time
105 to time to effect the purposes of sections 38a-836 to 38a-853, inclusive,
106 in accord with the plan of operation under section 38a-842; [(c)] (3) sue
107 or be sued; [(d)] (4) intervene as a matter of right as a party in any
108 proceeding before any court in this state that has jurisdiction over an
109 insolvent insurer, as defined in section 38a-838; [(e)] (5) negotiate and
110 become a party to such contracts as are necessary to carry out the
111 purpose of said sections; [(f)] (6) perform such other acts as are
112 necessary or proper to effectuate the purpose of said sections; [(g)] (7)
113 refund to the member insurers in proportion to the contribution of
114 each such member insurer to that account, that amount by which the
115 assets of the account exceed the liabilities, if, at the end of any calendar
116 year, the board of directors finds that the assets of said association in
117 any account exceed the liabilities of that account as estimated by the
118 board of directors for the coming year.

119 [(3) (A)] (c) (1) Each insurer paying an assessment under sections
120 38a-836 to 38a-853, inclusive, may offset [one hundred] fifty per cent of
121 the amount of such assessment against its premium tax liability to this
122 state under chapter 207. Such offset shall be taken over a period of the
123 five successive tax years following the year of payment of the
124 assessment, at the rate of twenty per cent per year of [the assessment

125 paid to the association] such offset. Each insurer to which has been
126 refunded by the association, pursuant to [subdivision (2)] subsection
127 (b) of this section, all or a portion of an assessment previously paid to
128 the association by the insurer shall be required to pay to the
129 Department of Revenue Services an amount equal to the total amount
130 that has been claimed as an offset against the premiums tax liability on
131 the premiums tax return or returns, as the case may be, filed by such
132 insurer and that is attributable to such refunded assessment, provided
133 the amount required to be paid to said department shall not exceed the
134 amount of the refunded assessment. If the amount of the refunded
135 assessment exceeds the total amount that has been claimed as an offset
136 against the premiums tax liability on the premiums tax return or
137 returns filed by such insurer and that is attributable to such refunded
138 assessment, such excess may not be claimed as an offset against the
139 premiums tax liability on a premiums tax return or returns filed by
140 such insurer or, if the offset has been transferred to another person
141 pursuant to [subparagraph (B)] subdivision (2) of this [subdivision]
142 subsection, by such other person. For purposes of this subparagraph, if
143 the offset has been transferred to another person pursuant to
144 [subparagraph (B)] subdivision (2) of this [subdivision] subsection, the
145 total amount that has been claimed as an offset against the premiums
146 tax liability on the premiums tax return or returns filed by such insurer
147 includes the total amount that has been claimed as an offset against the
148 premiums tax liability on the premiums tax return or returns filed by
149 such other person. The association shall promptly notify the
150 Commissioner of Revenue Services of the name and address of the
151 insurers to which such refunds have been made, the amount of such
152 refunds and the date on which such refunds were mailed to such
153 insurer. If the amount that an insurer is required to pay to the
154 Department of Revenue Services has not been so paid on or before the
155 forty-fifth day after the date of mailing of such refunds, the insurer
156 shall be liable for interest on such amount at the rate of one per cent
157 per month or fraction thereof from such forty-fifth day to the date of
158 payment.

159 [(B)] (2) An insurer, in this subparagraph called "the transferor",
160 may transfer any offset provided under [subparagraph (A)]
161 subdivision (1) of this [subdivision] subsection to an affiliate, as
162 defined in section 38a-1, of the transferor. Any such transfer of the
163 offset by the transferor and any subsequent transfer or transfers of the
164 same offset shall not affect the obligation of the transferor to pay to the
165 Department of Revenue Services any sums which are acquired by
166 refund from the association pursuant to [subdivision (2)] subsection (b)
167 of this section and which are required to be paid to the Department of
168 Revenue Services pursuant to [subparagraph (A)] subdivision (1) of
169 this [subdivision] subsection. Such offset may be taken by any
170 transferee only against the transferee's premium tax liability to this
171 state under chapter 207. The Commissioner of Revenue Services shall
172 not allow such offset to a transferee against its premium tax liability
173 unless the transferor, the affiliate to which the offset was originally
174 transferred, each subsequent transferor and each subsequent transferee
175 have filed such information as may be required on forms provided by
176 said commissioner with respect to any such transfer or transfers on or
177 before the due date of the premium tax return on which such offset
178 would have been taken by the transferor if no transfer had been made
179 by the transferor.

180 (d) The rates and premiums charged for insurance policies subject to
181 sections 38a-836 to 38a-853, inclusive, shall include amounts sufficient
182 to recoup a sum equal to the amounts paid to said association less any
183 amounts (1) returned to the member insurer by said association, or (2)
184 subject to an offset as set forth in subdivision (1) of subsection (c) of
185 this section. Such rates shall not be deemed excessive solely because
186 they contain an amount reasonably calculated to recoup assessments
187 paid by the member insurer to said association.

188 Sec. 2. Subsection (h) of section 38a-866 of the general statutes is
189 repealed and the following is substituted in lieu thereof (*Effective July*
190 *1, 2010, and applicable to assessments paid in income years commencing on*
191 *or after January 1, 2010*):

192 (h) (1) Each insurer paying an assessment under sections 38a-858 to
193 38a-875, inclusive, may offset [one hundred] fifty per cent of the
194 amount of such assessment against its premium tax liability to this
195 state under chapter 207. Such offset shall be taken over a period of the
196 five successive tax years following the year of payment of the
197 assessment, at the rate of twenty per cent per year of [the assessment
198 paid to the association] such offset. Each insurer to which has been
199 refunded by the association, pursuant to subsection (f) of this section,
200 all or a portion of an assessment previously paid to the association by
201 the insurer shall be required to pay to the Department of Revenue
202 Services an amount equal to the total amount that has been claimed as
203 an offset against the premiums tax liability on the premiums tax return
204 or returns, as the case may be, filed by such insurer and that is
205 attributable to such refunded assessment, provided the amount
206 required to be paid to said department shall not exceed the amount of
207 the refunded assessment. If the amount of the refunded assessment
208 exceeds the total amount that has been claimed as an offset against the
209 premiums tax liability on the premiums tax return or returns filed by
210 such insurer and that is attributable to such refunded assessment, such
211 excess may not be claimed as an offset against the premiums tax
212 liability on a premiums tax return or returns filed by such insurer or, if
213 the offset has been transferred to another person pursuant to
214 subdivision (2) of this subsection, by such other person. For purposes
215 of this subdivision, if the offset has been transferred to another person
216 pursuant to subdivision (2) of this subsection, the total amount that has
217 been claimed as an offset against the premiums tax liability on the
218 premiums tax return or returns filed by such insurer includes the total
219 amount that has been claimed as an offset against the premiums tax
220 liability on the premiums tax return or returns filed by such other
221 person. The association shall promptly notify the Commissioner of
222 Revenue Services of the name and address of the insurers to which
223 such refunds have been made, the amount of such refunds, and the
224 date on which such refunds were mailed to each such insurer. If the
225 amount that an insurer is required to pay to the Department of
226 Revenue Services has not been so paid on or before the forty-fifth day

227 after the date of mailing of such refunds, the insurer shall be liable for
 228 interest on such amount at the rate of one per cent per month, or
 229 fraction thereof, from such forty-fifth day to the date of payment.

230 (2) An insurer, in this subdivision called "the transferor", may
 231 transfer any offset provided under subdivision (1) of this subsection to
 232 an affiliate, as defined in section 38a-1, of the transferor. Any such
 233 transfer of the offset by the transferor, and any subsequent transfer or
 234 transfers of the same offset, shall not affect the obligation of the
 235 transferor to pay to the Department of Revenue Services any sums
 236 which are acquired by refund from the association pursuant to
 237 subsection (f) of this section and which are required to be paid to the
 238 Department of Revenue Services pursuant to subdivision (1) of this
 239 subsection. Such offset may be taken by any transferee only against the
 240 transferee's premium tax liability to this state under chapter 207. The
 241 Commissioner of Revenue Services shall not allow such offset to a
 242 transferee against its premium tax liability unless the transferor, the
 243 affiliate to which the offset was originally transferred, each subsequent
 244 transferor and each subsequent transferee have filed such information
 245 as may be required on forms provided by said commissioner with
 246 respect to any such transfer or transfers on or before the due date of
 247 the premium tax return on which such offset would have been taken
 248 by the transferor, if no transfer had been made by the transferor.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>July 1, 2010, and applicable to assessments paid in income years commencing on or after January 1, 2010</i>	38a-841
Sec. 2	<i>July 1, 2010, and applicable to assessments paid in income years commencing on or after January 1, 2010</i>	38a-866(h)

Statement of Legislative Commissioners:

Sections 1 and 2 were merged for consistency with the drafting conventions of the general statutes.

INS *Joint Favorable Subst.-LCO*